



ARIZONA STATE RETIREMENT SYSTEM

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Paul Matson
Director

MINUTES PUBLIC MEETING ARIZONA STATE RETIREMENT SYSTEM BOARD

**Friday, September 3, 2010
8:30 A.M., MST**

The Arizona State Retirement System (ASRS) Board met in the 10th Floor Board Room, 3300 N. Central Avenue, Phoenix, Arizona. Mr. David Byers, Chair of the ASRS Board, called the meeting to order at 8:35 A.M., MST.

The meeting was teleconferenced to the ASRS office at 7660 E. Broadway, Tucson, Arizona 85710.

1. Call to Order; Roll Call; Opening Remarks

Present: Mr. David Byers, Chair
Mr. Tom Connelly, Vice-chair
Mr. Chris Harris
Professor Dennis Hoffman
Mr. Kevin McCarthy
Mr. Tom Manos
Mr. Michael Townsend
Mr. Larry Trachtenberg
Mr. Steve Zeman

A quorum was present for the purpose of conducting business.

Mr. David Byers, Chair, stated agenda item 10 would be discussed prior to agenda item 9 because the appellant for agenda item 9 requested an executive session, which would take place in the 14th floor conference room.

2. Approval of the Minutes of the July 16, 2010 Public Meeting of the ASRS Board

Motion: Mr. Steve Zeman moved to approve the minutes of the July 16, 2010 Public Meeting of the ASRS Board. Mr. Tom Connelly seconded the motion.

By a vote of 9 in favor, 0 opposed, 0 abstentions, and 0 excused, the motion was approved.

3. Director's Report

Mr. Paul Matson, Director, presented the Director's Report. He noted eight employers remain delinquent. The amount of delinquencies was likely greater than usual due to the fact that funding was distributed by the Department of Education at a later date than in previous years.

4. Possible Presentation Regarding Board Committee Updates

Mr. Michael Townsend, Chair, External Affairs Committee, said the next External Affairs Committee meeting will take place October 1, 2010.

Mr. Tom Connelly, Chair, Investment Committee (IC), said the next IC meeting will take place

October 12, 2010.

Mr. Steve Zeman, Chair, Operations Committee (OC), said the next OC meeting will take place October 28, 2010.

5. New Agenda Items

No requests were made.

6. Call to the Public

No members of the public requested to speak.

7. Approval, Modification, or Rejection of Recommended Administrative Law Judge's Decision Regarding Ms. Georgia Wood's Appeal Regarding Spouse's Beneficiary Designation

Ms. Beljan explained the background of Ms. Wood's appeal. Mr. Wood became an active member in 1993 and changed his beneficiary from his second wife to his new third wife in 2000. In 2008 he changed his beneficiary from his third wife to his sister, Ms. Jeannie Slaughter. Mr. Wood passed away in 2009 and had a survivor benefit of approximately \$52,000. Ms. Beljan noted, in 2006 a bill was introduced requiring a spouse to sign a beneficiary form if a member chose a beneficiary other than their spouse. When it went to the House, the bill was modified to delete the requirement of the spouse's signature.

Ms. Beljan said before survivor benefits were paid, Ms. Wood appealed to the ASRS asserting she was not notified the member had removed her as beneficiary. Ms. Slaughter informed Ms. Beljan that Mr. Wood designated Ms. Slaughter as the beneficiary because he has an adult daughter who is mentally disabled, whose mother is deceased. Ms. Slaughter was to administer the funds for Mr. Wood's daughter. The Administrative Law Judge (ALJ) ruled that benefits contributed during the marriage are subject to community property law in Arizona and the member only has authority to designate half the benefits to a beneficiary of his choice. For private pension plans, the U.S. Supreme Court ruled that ERISA preempts community property law. There is no simple case to direct governmental plans on this issue.

Ms. Beljan contacted ASRS' outside tax counsel, Mr. Chuck Whetstine. His opinion was the ALJ determination was a fair consolidation of both ASRS statutes and Plan terms and Arizona community property law.

Ms. Beljan said the Board could take any of three positions:

- A.R.S. § 38-755 allows an ASRS member to name any beneficiary they want, so the ASRS should pay benefits to the designated beneficiary. The ASRS has generally taken this position up to this point. This is a new issue, that the ASRS has had an appeal regarding the designated beneficiary.
- The agency could take a position similar to what the ALJ recommended, consolidating plan terms in accordance with community property law and pay benefits accordingly, as the ALJ recommended.
- Failure of member to notify spouse of a beneficiary other than the spouse, completely invalidates the beneficiary designation. Ms Beljan did not believe this is legally supported. Statute is silent on what proof is required for notification to the spouse and on consequences if the member fails to notify their spouse.

Ms. Beljan noted the statute does not require any proof of spousal notification. The original language of the proposed bill required notarized proof of spousal notification, but that language was removed from the final bill.

Mr. Thomas Mason, counsel for Ms. Wood, argued she asserts she was not notified of the change in beneficiary.

Ms. Beljan said the ASRS updated their beneficiary forms in 2006, when the legislation was passed, to include a line above the member's signature block, stating the member has notified their spouse. However, Mr. Wood submitted an old version of the form without that statement, and the ASRS accepted the form. Prior to his death, Mr. Wood received one member statement reflecting his sister as beneficiary. He provided that statement to Ms. Slaughter, saying she could use it, if necessary, to demonstrate she should receive survivor benefits.

Mr. Thomas Mason said there is no proof Ms. Wood was notified and the ASRS should not have accepted an outdated form. He argued the statute is meaningless if no proof is required of spousal notification. He said the ASRS should require some mechanism of proof of notification.

Ms. Slaughter argued since the ASRS accepted the outdated form, that Ms. Slaughter should receive the benefits so she could administer them to Mr. Wood's daughter, as he had wished. This was the only portion of his estate left to his daughter.

The Board asked what staff recommended. Mr. Pat Klein noted the ALJ recommendation seemed reasonable. He noted the legislation was not ASRS-sponsored and the Committee that was to hear the bill would not do so until the language requiring proof of notification was removed. The Committee Chair's position was it was the member's responsibility to notify their spouse, not the ASRS' responsibility.

Motion: Mr. Larry Trachtenberg moved to accept the facts as determined by the Administrative Law Judge, but reach a different conclusion and award the entire pension (survivor benefits) to Ms. Wood. Mr. Steve Zeman seconded the motion.

Mr. Kevin McCarthy pointed out nothing in statute says a spouse cannot object even if they were notified they were not the beneficiary. However, spouses have another legal right to the funds under community property law, and Ms. Wood is pursuing that right.

Ms. Beljan asked if the motion was meant to invalidate Mr. Wood's designation of his sister as his beneficiary, therefore awarding the entire survivor benefits amount to Ms. Woods, based on the member's failure to notify his wife that he was designating a non-spouse beneficiary. Mr. Trachtenberg affirmed it was.

By a vote of 4 in favor, 5 opposed, 0 abstentions, and 0 excused, the motion failed.

Motion: Mr. Kevin McCarthy moved to accept the formula listed in the Administrative Law Judge's recommended decision for payment of ASRS survivor benefits. Mr. Michael Townsend seconded the motion.

By a vote of 6 in favor, 3 opposed, 0 abstentions, and 0 excused, the motion was approved.

8. Approval, Modification, or Rejection of Recommended Administrative Law Judge's Decision Regarding Ms. Jeanne Sabrack-Andreski's Appeal Regarding Request for Service Credit

Ms. Beljan explained Ms. Jeanne Sabrack-Andreski was appealing regarding service credit for her Maricopa County Community College District (MCCCD) part-time evening employment. In August 2009, Ms. Sabrack-Andreski submitted a Contributions Not Withheld (CNW) request to the ASRS for contributions from MCCCD. Ms. Beljan noted the majority of Ms. Sabrack-Andreski's MCCCD employment was not processed as an ASRS CNW because her MCCCD employment was excluded from ASRS membership and benefits.

Ms. Beljan explained A.R.S. § 38-727(1) requires that for employees of ASRS employers to be members of the ASRS, the employee positions be included in agreements (referred to as 218 agreements) covering them under the federal old age and survivors insurance system, known as Social Security. MCCCD amended its 218 Agreement in 1974 to exclude part-time evening positions for teachers who worked less than 15 hours per week. Because MCCCD's 218 Agreement clearly excluded Ms. Sabrack-Andreski's position, she was not eligible to participate in the ASRS and receive ASRS benefits associated with her MCCCD position.

Ms. Sabrack-Andreski said she had no additional documentation to present. She said all laws are not fair, and some should be modified. Mr. Byers said Board trustees must follow the law whether they like it or not. He indicated the Administrative Law Judge gave her a very helpful suggestion in a footnote in his recommendation, suggesting that she may pursue MCCCD administratively or in court for reimbursement of erroneously withheld taxes. Ms. Sabrack-Andreski asserted she believes the ASRS should pay her benefits associated with her MCCCD position.

Ms. Beljan said Ms. Sabrack-Andreski has stated she knows other people in similar situations who are receiving benefits the ASRS considers improper. Mr. Trachtenberg asked if we have investigated these allegations. Ms. Beljan said we do not know any names and do not have a subpoena. Ms. Sabrack-Andreski told the Board she would not divulge the members' names. Mr. Chris Harris noted the Board tries to do the right thing and would not approve paying any member benefits improperly.

Motion: Mr. Tom Manos moved to accept the ruling of the Administrative Law Judge to uphold the Director's determination that ASRS retiree Jeanne A. Sabrack-Andreski is denied ASRS eligibility and benefits associated with her Maricopa County Community College District (MCCCD) part-time evening employment. Mr. Tom Connelly seconded the motion.

By a vote of 9 in favor, 0 opposed, 0 abstentions, and 0 excused, the motion was approved.

9. Approval, Modification, or Rejection of Recommended Administrative Law Judge's Decision Regarding Ms. Brenda Murphy's LTD Appeal

Ms. Beljan explained Ms. Brenda Murphy was not present and had not responded when she was notified her appeal would be heard by the Board. Ms. Murphy became disabled on June 30, 2009, while employed by the Department of Economic Security (DES). A.R.S. § 38-797.07(A)(1) states that monthly LTD program benefits shall not exceed two-thirds of a member's monthly compensation at the time disability commences. Because she was receiving a reduced salary due to furloughs, her stated salary, which was a higher amount, was not used to calculate her LTD benefit payment.

Motion: Mr. Michael Townsend moved to accept the ruling of the Administrative Law Judge to uphold the ASRS Director's determination that Ms. Murphy's compensation was \$30,314.57 and that her monthly LTD benefit is \$1,684.21 prior to any statutory reductions. Mr. Tom Manos seconded the motion.

By a vote of 9 in favor, 0 opposed, 0 abstentions, and 0 excused, the motion was approved.

10. Presentation, Discussion and Appropriate Action Regarding Ms. Slava Satell's LTD Appeal Rehearing

Mr. Byers stated the Board had to decide whether to rehear Ms. Satell's appeal. Ms. Beljan stated no additional documents had been provided by Ms. Satell, except Ms. Satell had provided a letter to be given to the Board, just moments before the meeting.

Motion: Mr. Tom Connelly moved to go into executive session to rehear Ms. Satell's LTD Appeal. Mr. Chris Harris seconded the motion.

By a vote of 9 in favor, 0 opposed, 0 abstentions, and 0 excused, the motion was approved.

Mr. Byers said the Board would adjourn from the 14th floor conference room, where the executive session would be held. The Board recessed at 9:52 a.m.

Motion: Mr. Tom Manos moved to accept the Administrative Law Judge's decision with two modifications. The first being that implementation be delayed for 90 days. The second, staff must review (Ms. Satell's out of pocket) payments and to the extent that any of those payments were for medical (expenses), that those be excluded from the calculation.

Mr. Chris Harris seconded the motion.

By a vote of 9 in favor, 0 opposed, 0 abstentions, and 0 excused, the motion was approved.

11. The next ASRS Board meeting is scheduled for Friday, September 3, 2010, at 10:30 A.M., at 3300 N. Central Avenue, 10th Floor Board room, Phoenix, Arizona.

12. Adjournment of the ASRS Board

Mr. Byers adjourned the Board meeting at 10:45 A.M.

ARIZONA STATE RETIREMENT SYSTEM

Lisa Hanneman
Board Secretary

Date

Paul Matson
Director

Date